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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/757,175	01/14/2004	Thomas M. Walraven	LTTKP0116US	4188

7590 09/06/2005

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1621 Euclid Ave.  
Cleveland, OH 44115

EXAMINER

FRANCIS, FAYE

ART UNIT	PAPER NUMBER
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3725

DATE MAILED: 09/06/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/757,175

Applicant(s)

WALRAVEN, THOMAS M.

Examiner

Faye Francis

Art Unit

3725

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 20 June 2005.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1 and 3-25 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 and 3-25 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 01 January 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_

### DETAILED ACTION

1. In view of the appeal brief filed on 6/20/05, PROSECUTION IS HEREBY REOPENED. A new ground of rejection is set forth below.

To avoid abandonment of the application, appellant must exercise one of the following two options:

(1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,

(2) initiate a new appeal by filing a notice of appeal under 37 CFR 41.31 followed by an appeal brief under 37 CFR 41.37. The previously paid notice of appeal fee and appeal brief fee can be applied to the new appeal. If, however, the appeal fees set forth in 37 CFR 41.20 have been increased since they were previously paid, then appellant must pay the difference between the increased fees and the amount previously paid.

A Supervisory Patent Examiner (SPE) has approved of reopening prosecution by signing below:

### *Drawings*

2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the a Xylophone in claim 20 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets are required in reply to the Office action to avoid **abandonment** of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if

Art Unit: 3725

only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

4. Claims 5-20 and 22-25 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

With respect to claim 5: the phrase "two said strikers and tethers" in line 3 from bottom is vague since in lines 2 and 3 on only one striker and tether may be encompassed therein [note the word "a". It is not clear how many strikers and tethers being encompassed. Is it one striker and tether or more than one?

Note also claims 12, 15, 19 and 23-25 in this regard.

Art Unit: 3725

Claim 6 is indefinite since all that the applicant considers to be encompassed by the phrase "the striker end of the striker" cannot be determined. Additionally, note that there is insufficient antecedent basis for "the striker end" in the claim. Note also claims 11-12, 15, 19 and 24 in this regard.

Claim 12 is indefinite because it is not clear what the phrase "any spacing between the body attachment location" is intended to encompass.

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

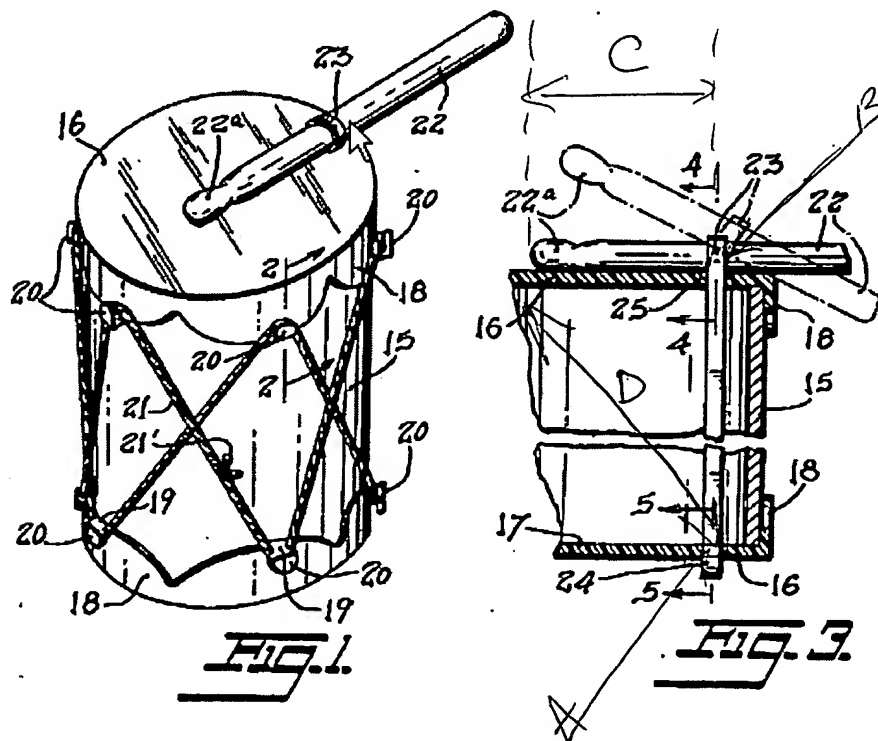
(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1, 3-4, 11, 21-22 and 25 are rejected under 35 U.S.C. 102(b) as being anticipated by Lebensfeld et al. [2,620,703], hereinafter Lebensfeld.

Lebensfeld discloses in Figs 1-9 (also see Figure below wherein the letter A-D have been added by the examiner), a toy percussion instrument, comprising: an instrument body 15, a striker/ implement [drumstick 22] for striking the instrument body to produce a sound; and a tether [resilient member 23] connecting the striker/ implement to the instrument body; wherein the tether has one end connected to the instrument body at a body attachment location A, and an opposite end connected to the striker/ implement at a striker/ implement attachment location B, the striker/ implement attachment location being fixed in relation to and spaced inwardly from the ends of the striker, and wherein the striker/ implement attachment location is spaced inwardly from

Art Unit: 3725

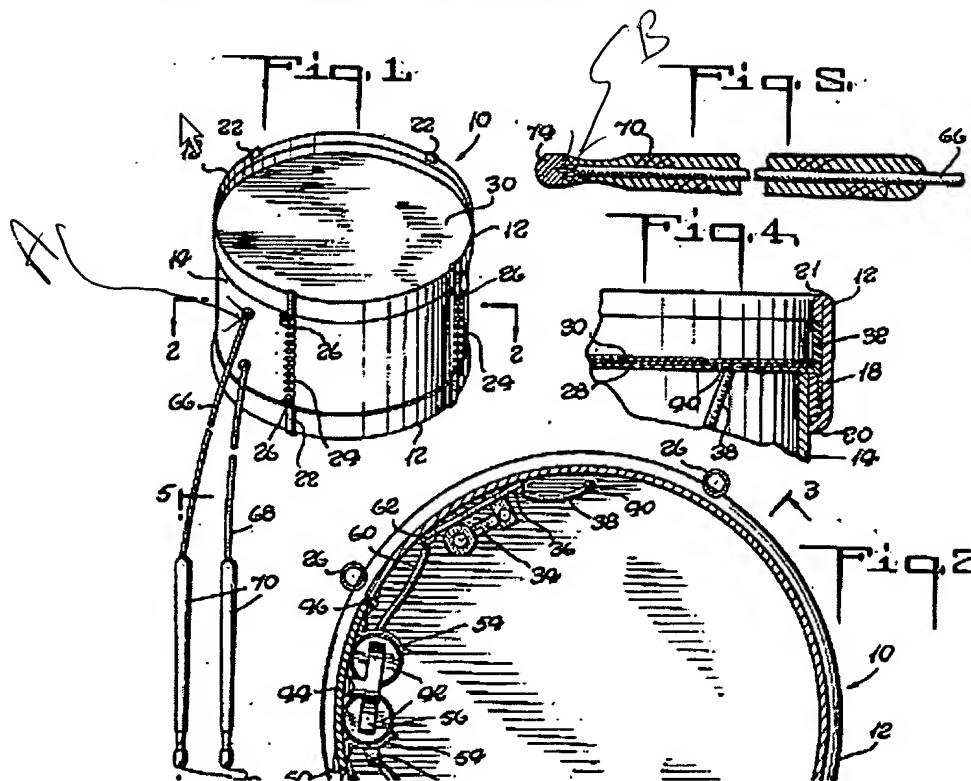
the ends of the striker by at least one fifth the length of the striker/ implement as recited in claim 1. Additionally, Lebensfeld discloses the striker/ implement attachment location is spaced inwardly from the ends of the striker/ implement by at least one fourth the length of the striker as recited in claim 3, the striker/ implement attachment location being fixed in relation to and spaced inwardly from the striker end of the striker/ implement by a distance C **about** equal the distance D between the body attachment location and a center of the drumming surface [in the absent of any definition in the specification and in so far as the applicant has claimed, the distance C is considered to be **about** equal to the distance D] as recited in claims 11, 22. Also, Lebensfeld discloses the striker/ implement attachment location is spaced inwardly from the ends of the striker implement by at least one fifth the length of the stricker/implement as recited in claim 21.



Art Unit: 3725

7. Claims 23 and 25 are rejected under 35 U.S.C. 102(b) as being anticipated by Levay [2,655,071].

Levay discloses in Figs 1-5 (also see Figure below wherein the letter A-B have been added by the examiner), a toy percussion instrument [drum 10], comprising: an instrument body 14, two striker/ implement [drumstick 70] for striking the instrument body to produce a sound; and a tether [wires 66 and 68] connecting the striker/ implement to the instrument body; wherein the tether has one end connected to the instrument body at a body attachment location A, and an opposite end connected to the striker/ implement at a striker/ implement attachment location B, the striker/ implement attachment location being spaced inwardly from the ends of the striker.



***Allowable Subject Matter***

8. Claims 5-10, 12-20 and 24 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.

***Response to Arguments***

9. Applicant's arguments with respect to claims 1 and 3-25 have been considered but are moot in view of the new ground(s) of rejection.

In response to applicant's argument that a xylophone, like a drum, is a well known percussion instrument that a detailed illustration thereof is not needed for a proper understanding of the invention, the examiner would like to point out that the drawings must show every feature of the invention specified in the claims. Therefor, the fact that the xylophone is a well-known percussion instrument is irrelevant.

***Conclusion***

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Faye Francis whose telephone number is 571-272-4423. The examiner can normally be reached on M-F 6:30-3:00.

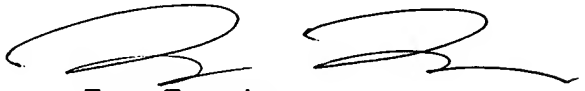
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Derris Banks can be reached on 571-272-4419. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.




Art Unit: 3725

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

FF



Faye Francis



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